

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5629 of 1995
to
First Appeal No.5673 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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The Special Land Acquisition Officer No.1, Mehsana
versus
Patel Jagdeshbhai Manilal Revabhai

Appearance:

Mr.K.P. Rawal, AGP, for the appellant
MR A.J. Patel for Respondent No. 1-1/2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/07/2001

COMMON ORAL JUDGMENT :

1. Appellant, Special Land Acquisition Officer, by
filing this group of first appeals under Section 54 of
the Land Acquisition Act, 1894 (to be referred to as

"Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, has challenged the common judgment and award dated October 25, 1994 passed by the learned 3rd Joint District Judge, Mehsana, in group of Land Reference Cases nos.547 of 1989 to 591 of 1989. As common question of facts and law arise for my consideration, I propose to dispose of all these appeals by this common order.

2. Agricultural lands of the respondents-claimants situated at village Ladol, Taluka Vijapur, District Mehsana, came to be acquired for the public purpose of "Ladol-Kharod-Jantral Road" by publication of notification under Section 4(1) of the Act on October 4, 1984. After following usual procedure, notification under Section 6 of the Act came to be published in the Government Gazette on May 22, 1986. After serving notices under Section 9 of the Act to the persons interested, the Land Acquisition Officer, on the basis of the materials placed before him, made his award on September 29, 1988 and offered compensation to the claimants at the rate of Rs.1.25 per sq.mtr. for the acquired lands. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Mehsana, which were numbered as Land Reference Cases Nos.547 of 1989 to 591 of 1989. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.483 of 1989.

3. Before the Reference Court also, the appellants claimed compensation at the rate of Rs.12/- per sq.mtr. According to the claimants, their lands were fertile and they used to raise three crops in a year. The said applications were contested by the appellant by filing written objections at Exh.7, inter alia, contending that the Land Acquisition Officer, while fixing the market price of the acquired lands, had taken into consideration relevant materials placed before him and the Land Acquisition Officer had offered just and adequate compensation and, therefore, the applications be dismissed with costs.

4. On overall appreciation of oral as well as documentary evidence, and the arguments advanced by the learned counsel for the parties, the Reference Court determined market price of acquired lands of village

Ladol at the rate of Rs.10 per sq.mtr. The Reference Court also awarded solatium at 30% under Section 23(2) of the Act and additional amount at the rate of 12% under Section 23(1-A) of the Act. The appellant has challenged the impugned common judgment and award by filing this group of appeals.

5. Heard learned Additional Government Pleader, Mr. K.P. Rawal, for the appellant and learned counsel Mr. A.J. Patel for the respondents-original claimants. I have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for my perusal before deciding this group of appeals.

6. On behalf of the claimants, Jagdishbhai Manibhai Patel, who is claimant of Land Acquisition Reference No.583 of 1989, was examined at Exh.37. On behalf of the appellant, one Natwarlal Kantilal Acharya was examined at Exh.40. Claimant, Jagdishbhai Manibhai Patel, Ex.37, deposed that village Ladol was situated at the distance of 5 kms from the taluka headquarter of Vijapur. That, village Ladol was having population of 15,000 to 17,000 and they have facility of marketing yard. That, people of adjoining villages Malav, Bamanava, Sardarpur, Motipura, etc. were coming to the marketing yard of village Ladol for purchasing their goods and, therefore, the marketing yard of village Ladol was trading in all the essential articles. That, village Ladol was having facilities of veterinary hospital, telephone exchange, milk cooperative societies, banks, electricity, water supply, etc. That, village Ladol is situated on the State Highway of Taranga-Ambaji. That, village Ladol was having educational facilities as in the village there were primary school and high school. With regard to fertility of the acquired lands, he deposed that they used to raise three crops in a year and all the lands were having irrigation facilities. The witness deposed that the lands of adjoining village Malav were acquired in the year 1985 for the public purpose of 'Vadnagar-Kahipur-Jantral Road', wherein, the Reference Court had determined market value of village Malav at the rate of Rs.10/- per sq.mtr. It may be mentioned that, against the award in respect of acquired lands of village Jantral, which was produced at Exh.36, First Appeal No.643 of 1995 was filed by the State of Gujarat in the High Court and the High Court, by order dated February 17, 1995, had summarily dismissed the appeal. Therefore, the market value of village Jantral at the rate of Rs.10/per sq.mtr for the land acquired in the year 1985 was confirmed by the High Court. The witness further

deposed that the lands of adjoining village Bamanava came to be acquired for the purpose of Dharoi Canal, wherein, the Reference Court had determined the compensation at the rate of Rs.10/- per sq.mtr. He, emphatically, deposed that the villages Jantral and Bamanava were adjoining to village Ladol and fertility of the lands of three villages was identical and the agriculturists used to raise similar types of crops. The award of the Reference Court in respect of acquired land of village Bamanava rendered in Land Acquisition Reference No.50 of 1987 was produced by the claimant at Exh.34. Notification under Section 4 of the Act in respect of acquired lands of village Bamanava was published on May 30, 1985 and the Reference Court had determined market value of the said acquired lands as on May 30, 1985 at the rate of Rs.10/per sq.mtr. It is not brought to the notice of this court that the said award in respect of acquired lands of village Bamanava was challenged in the High Court.

7. Even though, on behalf of the appellant, Natwarlal Kantilal Acharya was examined at Exh.40, he did not lead any evidence with regard to determination of market value of the acquired lands. Therefore, his evidence with regard to determination of market value did not provide any assistance to the Reference Court.

8 In my view, the claimants had successfully proved that the acquired lands were highly fertile and the agriculturists used to raise three crops in a year. Village Ladol was having all the facilities and was connected by road with all the major towns of the State of Gujarat more particularly all the towns of District Mehsana. Determination of market value of acquired lands of adjoining villages, namely, Jantral and Bamanava, at the rate of Rs.10/- per sq.mtr is also a relevant factor to be taken into consideration for the purpose of determination of market value of the present acquired lands. Notifications under Section 4(1) of the Act in respect of acquired lands of villages Jantral and Bamanava were issued in the near proximity of time and, therefore, the Reference Court had not committed any error in placing reliance on the earlier awards in respect of the acquired lands of villages Jantral and Bamanava for the purpose of determining the market price of the present acquired lands. Determination of market value of the acquired lands of adjoining villages Jantral and Bamanava had become final. Further, the evidence of claimant, Jagdishbhai Manibhai Patel, Ex.37, makes it clear that agricultural lands of villages Jantral and Bamanava were similar and comparable in all respects to

the lands acquired in the present case. It was not brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of villages Jantral and Bamanava which were previously acquired. Therefore, in my opinion, the Reference Court had not committed any error in determining market value of acquired lands of village Ladol at the rate of Rs.10/per sq.mtr. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. I am of the view that determination of market value of acquired lands of village Ladol at the rate of Rs.10/- per sq.mtr as on October 4, 1984, cannot be regarded as excessive at all. Under the circumstances, I am of the opinion that no ground is made out by learned counsel for the appellant to interfere with the impugned award in these appeals. The benefit extended to the respondents-claimants under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and does not call for any interference in these appeals. However, the claimants would not be entitled to solatium on the additional amount of 12% under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of Prem Nath Kapur and another vs. National Fertilisers Corporation of India Limited and others, reported in (1996) 2 Supreme Court Cases 71. However, learned counsel Mr. A.J. Patel for the claimants has placed reliance on the decision of the Supreme Court in the case of Annie Varghese and others vs. State of Kerala and others, reported in (1999) 6 Supreme Court Cases page 551, where, the Supreme Court has observed that, "if the Constitution Bench upholds the contention that the interest on solatium is to be granted, the petitioner can move the High Court to amend judgment and decree for carrying out the legal position declared by the Constitution Bench in that regard." In view of the observation of the Supreme Court in the case of Annie Varghese (supra), it would be open for the claimants to move the High Court to amend the judgment and decree for carrying out the legal position declared by the Constitution Bench.

9. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

10. It is submitted by the learned counsel for the claimants that the claimants' lands were acquired way back in 1984 and till date the amount awarded by the

Reference Court is not deposited by the Acquiring Body.
Therefore, the Acquiring Body shall make all endeavour to
deposit or pay the awarded amount to the claimants within
four months from today.

July 12, 2001 (M.H. Kadri, J.)
(swamy)